

REMARKS

IDS

The Examiner states that the IDS submitted on January 18, 2002 indicates "sheet 1 of 2," on its face but there is only one sheet present in the file. The IDS comprises one sheet only and the reference to a second sheet is in error. Applicants respectfully apologize for any confusion caused.

Drawings

The Examiner indicates that the formal drawings submitted on May 13 2002 are unacceptable because they have been destroyed by the radiation process. Applicants submit herewith a replacement set of formal drawings.

Objections

The Examiner has objected to an informality in the disclosure. In particular, the Examiner objects to the fact that on the first page of the specification a related patent application is listed by title only and not serial number. The Examiner indicates that an application number or Patent number is required. Applicants note that the related application is identified by both title and filing date, but will amend the specification to include a serial number when a serial number is received.

Reply to 35 U.S.C. 102 Rejections

The Examiner has rejected claims 1,2,4,5,11 and 12 under 35 U.S.C. 102 (b) as being anticipated by Reed et al. (U.S. Patent 4,939,731). With regard to claim 1, the Examiner asserts that Reed et al. teaches a method of transmitting data comprising the steps of determining a first data rate based on a measured first channel condition at a receiver to which data transmission is intended (column 2, lines 40-51); determining a second data rate based on a measured second channel condition at the receiver if the first data transmission was not successfully received by the receiver (column 2, lines 40-51; column 4, line 47 to column 5 line 10) and performing a second data transmission at the second data rate, wherein the second data transmission is a retransmission of the first data transmission (column 2, lines 40-51; column 4, line 47 to column 5, line 10).

Applicants respectfully disagree with the Examiner's characterization of Reed et al. and it's application to the present invention and respectfully traverse the Examiner's rejection as follows:

Reed et al. discloses a transmission system wherein data signals are transmitted as packets including one or more blocks of data encoded with an error correcting code. In the system disclosed in Reed when a packet of data containing errors is received by a radio station a request for retransmission of the data is automatically issued and, in the event that error laden messages are received at a rate that exceeds a predetermined amount, the system automatically reduces the rate of data transmission within each packet or changes the channel frequency. In Reed, the data rates are selected based on channel quality.

In contrast thereto, in the present invention, rate adaptation or the modification of the data rate of retransmissions is selected based on a measured channel condition or attribute of data such as the data rate message or the size of an encoder packet. This process of selection of a retransmission rate based on an attribute of data or a measured channel

condition is simply not disclosed in Reed et al. Claim 1 clearly recites this feature (“determining a second data rate based on a measured second channel condition”) and, accordingly Reed et al. does not anticipate the invention recited in claim 1. Claim 11 also recites the determination of a second data rate using a measured second channel condition and is also, therefore, not anticipated by Reed.

The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987).

Accordingly claims 2, 4, 5 and 12 are patentable for at least the reasons set forth above with respect to independent claims 1 and 11. Applicants therefore respectfully request that the Examiner find the claims patentable over Reed et al.

Reply to 35 U.S.C. 103 Rejections

The Examiner has rejected claims 3 and 13 under 35 USC 103 (a) as being unpatentable over Reed et al. in view of Wang et al. (U.S. Patent 5,838,267). Claims 6-10 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Reed et al.

As argued with respect to the Examiner’s rejections based on 35 U.S.C. 102 above, Reed et al. does not disclose the determination of a second data rate based on a measured second channel condition such as data rate or the size of an encoder packet. Reed et al., therefore, does not anticipate claims 1 and 11 of the present. Accordingly, claims 3, 13 and 6-10 are patentable for at least the reasons set forth above with respect to independent claims 1 and 11. Applicants therefore respectfully request that the Examiner find the claims patentable over Reed et al. and Wang et al.

Serial No. 09/725,438
Das 2/8/55
Filing Date: 11/29/2000
Attorney Docket 29633.047800

Request for Reconsideration pursuant to 37 CFR 1.111

Having responded to each and every ground for objection and rejection in the Office Action mailed on March 24, 2004, Applicant requests reconsideration in the instant application pursuant to 37 CFR 1.111 and requests that the Examiner allow claim(s) 1-13 and pass the application to issue. If there is any point requiring further attention prior to allowance, the Examiner is asked to contact Applicants' counsel who can be reached at the telephone number listed below.

Respectfully,

By


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DATE: June 24, 2004

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